

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MOONSCOOP SAS, et al.	)	Case 1:09-CV-01885-JG
	)	
Plaintiffs,	)	JUDGE JAMES S. GWIN
	)	
v.	)	
	)	
AMERICAN GREETINGS	)	<b>AMERICAN GREETINGS</b>
CORPORATION, et al.	)	<b>CORPORATION AND THOSE</b>
	)	<b>CHARACTERS FROM CLEVELAND,</b>
Defendants.	)	<b>INC.'S MOTION TO DECLARE THE</b>
	)	<b>COOKIE JAR PARTIES'</b>
	)	<b>COUNTERCLAIMS MOOT</b>
	)	
	)	
	)	
	)	

Cookie Jar's counterclaims have been superseded and should be declared moot because American Greetings did not file a third-party complaint in response to the plaintiffs' latest complaint.<sup>1</sup> An amended complaint supersedes all prior complaints. *B&H Medical, LLC v. Stephen M. Ryan, PLLC*, 526 F.3d 257, 268 n.8 (6th Cir. 2008). "When a plaintiff files an amended complaint, the new complaint supersedes all previous complaints and controls the case from that point forward' and 'wipes away prior pleadings.'" *Piher v. City of Grand Rapids*, 2009 U.S. Dist. LEXIS 54433 (W.D. Mich. 2009) (quoting *Massey v. Helman*, 196 F. 3d 727, 735 (7th Cir. 1999)).

---

<sup>1</sup> American Greetings Corporation and Those Characters From Cleveland, Inc. (collectively "American Greetings") submit this motion in response to the counterclaims previously filed by Cookie Jar Entertainment, Inc. and Cookie Jar Entertainment (USA) Inc. (collectively "Cookie Jar") (Dckt. No. 67) pursuant to this Court's February 11, 2010 Order. (Dckt. No. 83.)

A third-party complaint is a derivative pleading. As Rule 14 makes clear, “[a] defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Fed. R. Civ. P. 14(a)(1); *see also Trane U.S., Inc. v. Meehan*, 250 F.R.D. 319, 323 (N.D. Ohio 2008) (“third-party pleading is appropriate only where the third-party defendant’s liability to the third-party plaintiff is dependent on the outcome of the main claim; one that merely arises out of the same set of facts does not allow a third-party defendant to be impleaded.”); *Leach v. Bishop Bros. Auto Auction, Inc.*, 441 F. Supp. 98 (N.D. Ga. 1977) (liability of third-party defendant is dependent upon liability of the third-party plaintiff under Rule 14(a)); *Tower Mtg. Corp. v. Reynolds*, 81 F.R.D. 560 (W.D. Okla. 1978) (third-party claim may be asserted under Rule 14(a) only when third-party’s liability is in some way dependent on the outcome of the main claim or when the third-party is secondarily liable to defendant). Accordingly, because a third-party complaint is derivative of the complaint, the third-party complaint is superseded when the complaint on which it is based is superseded.

Cookie Jar was a party to this case only because it was brought in as a third-party defendant by American Greetings. Its liability and its status as a party were dependent upon the outcome of MoonScoop’s claims against American Greetings. When plaintiffs filed their Second Amended Complaint, all prior pleadings were superseded, including the third-party pleading and the responses to the third-party pleading.

Accordingly, because American Greetings did not assert a third-party complaint against Cookie Jar in response to the Second Amended Complaint, Cookie Jar is no

longer a party to this case, its counterclaims against American Greetings are therefore moot, and American Greetings respectfully requests that this Honorable Court enter an Order recognizing same.

Respectfully submitted,

*s/Damond R. Mace*

Damond R. Mace (0017102)

*dmace@ssd.com*

Steven A. Friedman (0060001)

*sfriedman@ssd.com*

Donald W. Herbe (0076500)

*dherbe@ssd.com*

SQUIRE, SANDERS & DEMPSEY L.L.P.

4900 Key Tower

127 Public Square

Cleveland, Ohio 44114

Phone: (216) 479-8500

Fax: (216) 479-8780

Attorneys for American Greetings Corporation  
and Those Characters From Cleveland, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2010, a copy of foregoing was filed electronically. Notice of this filing is being sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*s/Damond R. Mace*

One of the Attorneys for American  
Greetings Corporation and Those  
Characters From Cleveland, Inc.